



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 9, 2004

Mr. Miles J. LeBlanc  
General Counsel  
Houston Community College System  
P.O. Box 667517  
Houston, Texas 77266-7517

OR2004-6737

Dear Mr. Le Blanc:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206889.

The Houston Community College System (the "HCCS") received a request for the following: (1) "public information" concerning "potential annexation of any territory" during a certain period; (2) notes taken by board members of the HCCS during the annexation discussion of a May 15 board meeting; (3) correspondence of HCCS employees during a certain period regarding annexation; (4) tape recordings or transcripts of the May 15 board meeting; (5) minutes of the board meeting; (6) notices and agenda items of the board meeting; (7) certain information provided to board members in connection with the "Election/Campaign Discussion" portion of the board meeting; and (8) any "motions, authorizations, executed documents, and/or orders adopted, approved or authorized" at the board meeting.<sup>1</sup> Because George Scott asserts that his statement to the HCCS was not a request for information under the Act, the HCCS withdraws its request for an opinion regarding his request. However, the HCCS seeks a ruling from this office regarding the request of Jeff Davis. You state you have provided some of the requested information to the

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<sup>1</sup>The HCCS sought and received a clarification of some of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also Open Records Decision No. 31 (1974) (stating that when governmental bodies are presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

requestor and that some of the information does not exist.<sup>2</sup> You claim that the remaining information is excepted under sections 552.101, 552.106, 552.107, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that the minutes of an open meeting are public records pursuant to the Open Meetings Act. Gov't Code § 551.022 (minutes and tape recordings). Information that a statute other than chapter 552 of the Government Code expressly makes public is not subject to the exceptions found in chapter 552. Open Records Decision No. 623 at 3 (1994). Thus, HCCS must release the submitted minutes of the May 15 meeting. *See* Open Records Decision No. 225 at 4 (1979) ("It is our decision that the minutes are public in whatever form they exist.").

We now address HCCS's section 552.111 assertion for the remaining information. 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. Section 552.111 does not, however, except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 at 4-5 (1993). The preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990).

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<sup>2</sup>We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

The HCCS asserts that the remaining information consists of a note pertaining to an issue discussed at the meeting and a document distributed during that meeting “that was created to advise the Trustees and Administrators of the financial aspects of annexing certain areas.” Upon review of the submitted arguments and information, we agree that the remaining information is excepted from release under section 552.111.<sup>3</sup>

To conclude, the minutes of the meeting must be released pursuant to the Open Meetings Act. However, the remaining information is excepted from release pursuant to section 552.111.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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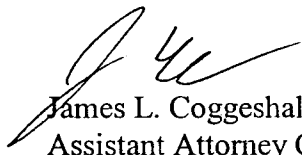
<sup>3</sup>Because we are able to resolve this under section 552.111, we do not address your other arguments for exception regarding this information. We also note that HCCS asserts that it plans to release this information once the minutes to the meeting have been approved.

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/sdk

Ref: ID# 206889

Enc. Submitted documents

c: Mr. Jeffrey A. Davis  
McGinnis, Lochridge & Kilgore, L.L.P.  
1221 McKinney Street  
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(w/o enclosures)